IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.38194 of 2002

1. Chellam @ Chellammal ... Petitioner.
2. G. Karunaimani
3. G. Angusamy
4. G. Gandhi
5. G. Natarajan
6. G. Rajeswari
7. G. Siva
8. G. Mahalakshmi
9. G. Karthikeyan
10. G. Sennarani
11. G. Menna

Petitioners 2 to 11 are brought on record as legal heirs of the deceased first petitioner as per order of Court, dated 07.07.2006 in WPMP No. 24596/04 in WP No. 38194/02

Vs.

1. The Government of India,
   Rep.by its Secretary,
   Home Affairs,
   Freedom Fighters Division,
   Loknayak Bhavan,
   New Delhi - 100 011.

2. The Secretary to Government,
   Public (Political Pension-I) Department,
   Secretariat, Fort St.George,
   Chennai -9

3. The District Collector,
   Collectorate, Madurai District,
   Madurai .. Respondents

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus as stated therein.

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For petitioner : Mr.S.M.Subramaniam
For respondents : For R1 – No appearance
For R2 & R3 Mr.M.Mahalingam, G.A

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Mandamus, to direct the respondents to grant Freedom Fighters Pension of the petitioner's husband from 16.12.1982 (date of application) to 12.10.2000 (date of his death) and consequently direct the respondents to pay Freedom Fighters Family Pension to the petitioner with effect from 13.10.2000 onwards and to direct the respondents to pay the arrears of pension and family pension with interest and to pay the future family pension punctually.

2. Heard the learned counsel for the petitioner as well as the respondents.

3. It is the case of the petitioner that the husband of the petitioner late S.Gopal submitted an application for Swatantrata Sainik Samman Pension (Freedom Fighters Pension), on 16.12.1982, before the first respondent, along with the necessary documents. Since no reply was received from the first respondent, he had made another representation on 12.08.1996. It is the further case of the petitioner that her husband was a freedom fighter who had participated in the freedom movement and had been arrested on a number of occasions. During the year 1942, he had participated in the Quit India Movement and had been arrested by the British Government and lodged in Alipuram prison, for nearly 6 months, along with one Thiru.Muthu a former member of the legislative assembly, who is also a freedom fighter. After his release, he had absconded on the advise of the other leaders of the freedom movement, during the period from 28.03.1943 to 21.12.1943. He had also participated in a number of agitations against the then British Government. As per the government orders, the petitioner's husband had obtained certificates from one Mr.I.Mayandi Bharathi and Mr.A.B.Nagier, both belonging to Madurai District and who had been lodged in prison for more than two years and are receiving Central Government Freedom Fighters Pension. After obtaining the certificates from the co-prisoners, he had submitted an application, dated 12.08.1996, before the Madurai District Collector. The third respondent, had forwarded the same to the Government in Ltr.No.M-M-101346/96-2, dated 27.08.1996. The application seeking for Freedom Fighters Pension was returned to the District Collector with a direction that the District Committee should find out the genuineness of the co-prisoners certificate and recommend the application. The District Committee should scrutinise and recommend the case of the applicant for grant of pension. A selection committee has been constituted with District Collector as Chairman, the District Revenue Officer as Vice Chairman and freedom fighters.

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Accordingly, the committee had conducted an enquiry, on 27.03.1997, and recommended the application of the petitioners husband as being eligible for freedom fighters pension. The third respondent had forwarded the application to the Government in Proc.Ni.Mu.151880/96-1, dated 29.04.1997, to the government. However, the government had returned the application accepting the certificate issued by Thiru.Mayandi Bharathi, but had rejected the certificate of Thiru.A.B.Nagier and consequently directed the petitioner's husband to get one more certificate. Accordingly, he had obtained one more co-prisoners certificate from Thiru.A.M.Lakshmanan of Madurai Distirct who had also been imprisoned for more than three years. The district committee had again forwarded the application along with the certificates in his proceedings Proc.O.Mu.No.34402/98, dated 28.04.1998. However, the application was again returned by the government stating that a certificate from a freedom fighter is required regarding the identity of the petitioner's husband, self-declaration and a certificate that no records were available. After obtaining all the required documents, the application was resubmitted again on 01.04.1999. However, the application was again returned on 06.10.1999. In the mean time, the petitioner's husband had died on 12.10.2000, leaving behind three unmarried daughters and one unemployed son.

4. The petitioner had also submitted that a Division Bench of this Court in R.Thangavelu Vs. The Government of India and others reported in 1994 WLR 137, has held that :-

> " Production of documentary evidence: As regards the production of documentary evidence like imprisonment/detention certificate from the concerned Jail Authorities / District Magistrates or the State Governments, the Government should adopt a pragmatic approach instead of being hyper technical..... Once a certificate from a co-prisoner or INA Board is produced and if the government is satisfied about the genuineness of the same, it will not be necessary to insist on jail records/Court records or Government records. In such cases, it will be but fair that the concerned Government should act on the co-prisoner's certificate if it is genuine and found to be reliable"

In another case decided by this Court M.A.Kandasamy Pillai Vs. The Government of Tamil Nadu and another, reported in 2002(3) CTC 487, has held that:-

> "Adopting technical approach in matters relating to freedom fighters pension not in consonance with law declared by S.C.in 2001(8) SCC Page-8"

Inspite of repeated representations, no action has been taken by the respondents with regard to the grant of freedom fighters pension for her husband, late S.Gopal, who had died on 12.10.2000. It had also

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been stated by the petitioner that her family has been in penury and in great distress. Therefore, the present writ petition had been filed.

5. At this stage of the hearing of the case, it is brought to the notice of this Court that the petitioner Chellam @ Chellammal had died during the pendency of the present writ petition. i.e. On 04.05.2004. Therefore, the W.P.M.P.No.24596 of 2004, had been filed to substitute the legal heirs of the deceased Chellam @ Chellammal as the writ petitioners. In view of the said writ petition miscellaneous petition having been allowed, the substituted petitioners namely, the legal representatives of Chellam @ Chellammal, are permitted to submit a fresh representation before the second respondent within 15 days from the date of receipt of a copy of this order, with regard to their claim for the grant of Freedom Fighters' pension. On such representation being made, the second respondent is directed to consider the same and pass appropriate order on merits and in accordance with law within a period of eight weeks thereafter.

With the above directions, the writ petition is disposed of. No costs.

ssm

Sd/
Asst.Registrar

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Sub Asst.Registrar

To
1. The Secretary,
The Government of India,
Home Affairs,
Freedom Fighters Division,
Loknayak Bhavan,
New Delhi - 100 011.
2. The Secretary to Government,
Public (Political Pension-I) Department,
Secretariat, Fort St.George,
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3. The District Collector,
Collectorate, Madurai District,
Madurai.

ONE CC TO MR.S.M.Subramaniam, Advocate (sr 31931)

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